

7 FAM 1200 APPENDIX G POSTHUMOUS LOSS OF NATIONALITY

(CT:CON-407: 06-29-2012)

(Office of Origin: CA/OCS/L)

7 FAM 1210 APPENDIX G INTRODUCTION

(CT:CON-256: 05-15-2008)

- a. In reviewing posthumous loss of citizenship cases, it is important to emphasize that the burden of proof always rests upon the shoulders of the party asserting that a loss has occurred. It is also important to keep in mind that each case needs to be considered on its own merits.
- b. The latter caveat notwithstanding, in instances when a finding of loss has not been made prior to a U.S. citizen's death, the Bureau of Consular Affairs, Directorate of Overseas Citizens, Office of American Citizens Services and Crisis Management (CA/OCS/ACS) would be reluctant to approve a Certificate of Loss of Nationality (CLN) posthumously, and such approvals are in fact rare. Our reticence is due to the fact that we did not have, prior to death, an opportunity to ascertain from the concerned individual whether his/her commission of the statutory act of expatriation was done voluntarily with the intent to relinquish U.S. citizenship.
- c. CA/OCS/ACS could approve a CLN for an individual who, while competent and not acting under duress or undue influence, executed an oath of renunciation but whose death preceded the arrival in CA/OCS/ACS of the paperwork attendant to the oath. In such an instance, the posthumous approval of the CLN would serve to give effect to the intent of the deceased U.S. citizen clearly articulated prior to death.
- d. CA/OCS/ACS would consider approving a CLN in a situation when the deceased U.S. citizen had, prior to or upon completing the standard questionnaire to determine citizenship, advised a consular officer in writing that he/she had or was about to commit an act of expatriation (and the citizen ultimately performed the expatriating act). The communication must indicate unequivocally that the individual was acting voluntarily, fully intending to relinquish his/her U.S. citizenship. Such a written statement to a consular officer indicates that the citizen had reflected upon the consequences attendant to his/her actions and their impact upon his/her citizenship. Therefore, absent any countervailing documentation or other conduct that would put into question the truthfulness or bona fides of the citizen's assertions to the consular officer, a cogent argument in such a case could be made that the preponderance of the evidence reflects the occurrence of loss of

citizenship.

- e. On a case-by-case basis, CA/OCS/ACS could consider a request for the issuance of a CLN when an individual who has committed or is on the threshold of committing an act of expatriation has written in a diary, executed an affidavit before someone other than a consular officer, sent a letter to a disinterested third party, etc. that his/her actions in committing the expatriating act were done voluntarily with the intent of relinquishing citizenship. In such cases, the consular officer, in addition to ensuring the bona fides of the written communication, should examine the individual's conduct subsequent to performing the expatriating act in an effort to ascertain whether it was consistent with the written expression of intent.
- f. Finally, since citizenship is a status personal to the individual, absent written documentation from the deceased, CA/OCS/ACS would find it extremely difficult to approve a CLN predicated solely upon the statements of third parties with respect to the intentions of the deceased vis-à-vis his/her U.S. citizenship or with respect to alleged oral statements of the deceased.

7 FAM 1220 APPENDIX G POSTHUMOUS REVIEW OF LOSS OF U.S. NATIONALITY

(CT:CON-407: 06-29-2012)

- a. When a finding of loss has already been made (i.e., CA/OCS/ACS (or its predecessor organization) had already approved the CLN) and the late, former U.S. citizen had indicated to the Department in writing (e.g., executed the standard questionnaire to determine citizenship) that he or she had indeed committed the act of expatriation voluntarily with the requisite intent to relinquish, the Office of *Legal Affairs* (CA/OCS/L) would be extremely hesitant to recommend reversal of the earlier decision absent compelling evidence that is contemporaneous with the act of expatriation that demonstrates that the deceased's actions were either involuntary or that he/she lacked the intent to relinquish. CA/OCS/L generally would not accept self-serving assertions from any possible interested third party. CA/OCS/L could, however, consider the documented opinions from disinterested third parties (e.g., mental health professionals, attending physicians) who might be able to shed light upon the state of mind of the individual at the time of the commission of the expatriating act.
- b. When a finding of loss has been made and the Department's files do not reflect in any way that the individual intended to give up U.S. citizenship, CA/OCS would not continue to sustain that finding and CA/OCS/L would

subsequently vacate the CLN. For example, prior to the U.S. Supreme Court finding in *Afroyim*, the Department presumed or did not require intent to relinquish citizenship. If a loss of nationality file from this earlier period reflected this decision making, CA/OCS would instead apply current standards for adjudicating loss, which require intent to relinquish citizenship, and may include the administrative presumption that a citizen intends to retain U.S. citizenship under specified circumstances.

- c. When a finding of loss has been made and the statutory basis for the CLN's issuance has been ruled unconstitutional, it would be incumbent upon the Department to posthumously vacate the CLN.
- d. Following the cancellation of the CLN, the Department should, when appropriate, be prepared to approve the consular report of death abroad of a U.S. citizen and issue documentation to any offspring of the deceased American who have or have not been previously documented as U.S. citizens.
- e. *CA/OCS/L* should advise pertinent federal agencies of the reversal of the finding of loss of nationality in accordance with 7 FAM 1240.

7 FAM 1230 THROUGH 1290 APPENDIX G UNASSIGNED